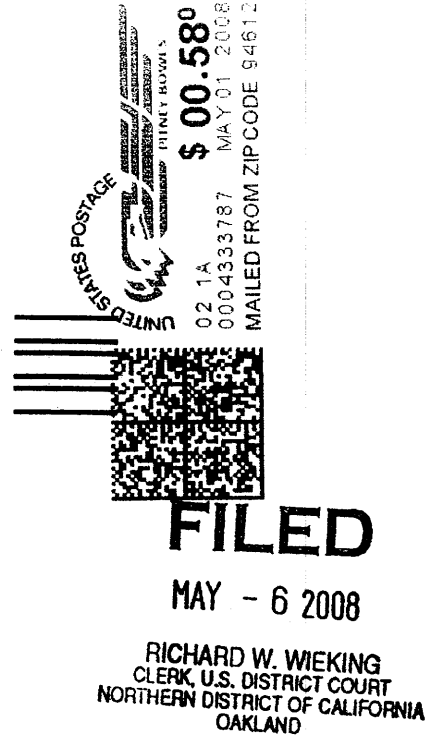


Malinka Moya
40. 42. Parsons Street
San Francisco, CA 94118

CV08-02124 SBA

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NORTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FILED

APR 5 2008

RICHARD W. WEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

MALINKA MOYE,

No. C 08-02124 SBA

Plaintiff,

ORDER

v.

[Docket No. 3]

LYDIA BACA,

Defendant.

REQUEST BEFORE THE COURT

Before the Court is *pro per* plaintiff's Application to Proceed *in Forma Pauperis* (the "Application") [Docket No. 3]. For the reasons discussed below, the Court DENIES without prejudice the Application.

BACKGROUND

On April 24, 2008, plaintiff *pro per* sued defendant Lydia Baca. *See* Docket No. 1. Plaintiff's complaint simply states he is suing defendant under the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq*, the Uniform Fraudulent Transfers Act of 1996, the Uniform Fraudulent Conveyances Act, and perjury. Plaintiff provided no other allegations to support his listed claims.

LEGAL STANDARD

I. Demonstrating *In Forma Pauperis* Status

The benefit of proceeding *in forma pauperis* is a privilege, not a right. *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984). As 28 U.S.C. § 1915(a)(1) states, in part:

Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that

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1 includes a statement of all assets such person possesses that the person is unable to
 2 pay such fees or give security therefor.

3 28 U.S.C. § 1915(a)(1).

4 A petitioner need not “be absolutely destitute to enjoy the benefit of this statute.” *Adkins v.*
 5 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948); *Jefferson v. U.S.*, 277 F.2d 723, 725 (9th
 6 Cir. 1960), *cert. denied*, 364 U.S. 896 (1960). An affidavit is sufficient if it states a person cannot
 7 pay or provide security for court costs and still provide himself or herself and any dependents with
 8 the necessities of life. *Adkins*, 335 U.S. at 339.

9 II. Claims Review under 28 U.S.C. § 1915

10 Title 28 U.S.C. § 1915 also authorizes a district court to dismiss a claim filed *in forma*
 11 *pauperis* “at any time” if it determines: (1) the allegation of poverty is untrue; (2) the action is
 12 frivolous or malicious; (3) the action fails to state a claim; or (4) the action seeks monetary relief
 13 from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). *Pro se* pleadings
 14 must be liberally construed. *Balisteri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).
 15 When reviewing a complaint, however, a court does not accept as true unreasonable inferences or
 16 conclusory legal allegations cast in the form of factual allegations. *See W. Mining Council v. Watt*,
 17 643 F.2d 618, 624 (9th Cir. 1981); *Miranda v. Clark County, Nev.*, 279 F.3d 1102, 1106 (9th Cir.
 18 2002) (“conclusory allegations of law and unwarranted inferences will not defeat a motion to dismiss
 19 for failure to state a claim”); *Sprewell v. Golden State Warriors*, 266 F.3d 1187 (9th Cir. 2001);
 20 *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988) (“conclusory allegations without
 21 more are insufficient to defeat a motion to dismiss for failure to state a claim”). Leave to amend is
 22 properly denied “where the amendment would be futile.” *DeSoto v. Yellow Freight Sys.*, 957 F.2d
 23 655, 659 (9th Cir. 1992). But if a plaintiff’s complaint is found deficient and an amendment could
 24 possibly cure the deficiency, the complaint must be dismissed with leave to amend. *See Eldridge v.*
 25 *Block*, 832 F.2d 1132, 1135-37 (9th Cir. 1987).

26 ANALYSIS

27 The Court has reviewed plaintiff’s Complaint and finds it does not state a claim upon which
 28 relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). While Federal Rule of Civil Procedure 8 only

1 requires, "a short and plain statement of the claim showing that the pleader is entitled to relief[.]"
 2 Fed. R. Civ. P. 8(a)(2); *Leatherman v. Tarrant County Narcotics Intelligence and Coordination*
 3 *Unit*, 507 U.S. 163, 168 (1993); *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001), a
 4 party must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which
 5 it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957), *abrogated on other grounds by Bell Atl. Corp. v.*
 6 *Twombly*, ___ U.S. ___, 127 S.Ct. 1955 (2007); *Yamaguchi v. U.S. Dep't of the Air Force*, 109 F.3d
 7 1475, 1481 (9th Cir. 1997) (a complaint must sufficiently establish a basis for judgment). Here,
 8 plaintiff has failed to provide any notice to defendant as to what are the bases for his claims.

9 Further, under claims asserting fraud, plaintiff must meet the higher pleading standards of
 10 "particularity," imposed by Federal Rule of Civil Procedure 9(b). Fed. R. Civ. P. 9(b);
 11 *Desaigoudar v. Meyercord*, 223 F.3d 1020, 1022-23 (9th Cir. 2000). Because, however, plaintiff
 12 may be able to cure his pleading defects by amendment, the Court will grant him 30 days leave to
 13 amend.

14 Even if plaintiff had stated a claim upon which relief could be granted, however, the Court
 15 could not grant his Application. The Court notes it is difficult to read and illogical. *See* Docket
 16 No. 3. Plaintiff alleged he has a monthly income of \$750,000 per month, no expenses, yet receives
 17 Supplemental Security Income ("SSI") from the Social Security Administration. *See id.* The Court
 18 could not approve such an Application. Because, however, plaintiff may be able to cure these defect
 19 by amendment, the Court will grant plaintiff 30 days leave to amend.

20 **If, however, plaintiff fails to file an Amended Complaint and a new Application, within**
 21 **30 days of the date of this Order, the Court will dismiss this matter without prejudice, for**
 22 **failure to prosecute.**

23 CONCLUSION


24 For the foregoing reasons, the Court DENIES without prejudice plaintiff's Application to
 25 Proceed *in Forma Pauperis* [Docket No. 3]. Likewise, the Court DISMISSES plaintiff's Complaint
 26 [Docket No. 1]. Plaintiff has 30 days from the date of this Order to file an Amended Complaint and
 27 file a new Application. **If, however, plaintiff fails to file an Amended Complaint and a new**

28 ///

1 Application, within 30 days of the date of this Order, the Court will dismiss this matter
2 without prejudice, for failure to prosecute.

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4 IT IS SO ORDERED.

5 April 30, 2008

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7 Sandra Brown Armstrong
8 United States District Judge
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2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA
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6

7 MALINKA MOYE,
8 Plaintiff,

Case Number: CV08-02124 SBA

CERTIFICATE OF SERVICE

9 v.

10 LYDIA BACA et al,
11 Defendant.
12

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
Northern District of California.

14 That on April 30, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)
15 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in
16 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's
office.

17
18 Malinka Moye
19 40. 42. Parsons Street
San Francisco, CA 94118

20 Dated: April 30, 2008

21 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk
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